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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Date 08/07/2008

Appeal No. E/2321/2006-SM[BR]

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S LAXMI SUITINGS
20/5, HEAVY INDUSTRIAL AREA, JODHPUR

M/S LAXMI SUITINGS — Appellant
Vs
THE COMMISSIONER OF CENTRAL EXCISE JAIPUR-II — Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 1056 /2008 –SM[BR] dated 21.5.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   THE COMMISSIONER OF CENTRAL EXCISE JAIPUR-II
   NCR BUILDING, STATUE CIRCLE, JAIPUR
2. Adv. / Consult
   MR.OM P.AGARWAL & CO.
   56, SECTION 7, N.P.H ROAD, JODHPUR(RAJ)
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. II

Excise Appeal No. 2321 of 2006-SM

[Arising out of Order-in-Appeal No. 202/ HKS/CE/ JPR-II /06 dated 12.4.2006 passed by Commissioner of Customs & Central Excise (Appeals), Jaipur]

For approval and signature:

Hon'ble Mr. S.S.Kang, Vice President

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

M/s. Laxmi Suitings — Appellant

Vs.

Commissioner of Central Excise Jaipur II — Respondent

Appearance: Shri O.P. Agarwal, CA for the Appellant
Ms. Archna Pandey Tiwari, Jt.CDR for the Respondent

Date of decision : 21.5.2008

FINAL **ORDER NO. 1056/08-SM (BR)**

Per S.S.Kang:

Heard both sides. Appellant filed this appeal against the impugned order passed by the Commissioner (Appeals).

2. Brief facts of the case are that the appellant are engaged in the manufacture of grey fabrics and were working under the CENVAT credit scheme. The applicants were availing credit in respect of duty paid on inputs which is basic excise duty as well as Additional Excise Duty (Textile and Textile Ariticles) Act [AED(T&TA] . The final product of the appellant were exempted from payment of duty with effect from 9.7.04. As the final product of the appellant was exempted from payment of duty, the appellant paid basic excise duty from the account of AED (T&TA) in respect of inputs lying in stock or contained in the finished goods and under process. A show cause notice was issued to the appellant on the ground that the credit in respect of AED (T&TA) cannot be utilised for payment of basic excise duty and on this ground demand was raised.

3. The adjudicating authority confirmed the demand on the ground that appellant wrongly paid basic excise duty from AED (T&TA). Commissioner (Appeals) also dismissed the appeal filed by the appellants.

4. The appellant raised the contention that even in case the final product was exempted from payment of duty, manufacturer is liable to

reverse the credit on basic excise duty which is lying in their accounts and not required to pay the credit which is already utilised. Revenue cannot ask for recovery of credit on the inputs lying in stock, under process or contained in the final goods beyond the balance lying in their accounts. The contention is that the credit was availed rightly and duty has been discharged from that account at the time of clearance of goods. Appellant relied upon Larger Bench decision of the Tribunal in the case of Ashoka Iron and Steel Fabricators reported in 2002 (140) ELT 277. The Appellant also relied upon the decision of the Hon'ble Rajasthan High Court in the case of Hindustan Zinc vs. UOI reported in 2008 (223) ELT 149 and the decision of Hon'ble Punjab & Haryana High Court in the case of CCE, Chandigarh vs. C.N.C. Comercial Ltd. reported in 2008 (224) ELT 239(P&H). The contention of the Revenue is that as show cause notice was issued only on the ground that appellant wrongly paid the basic excise duty from the credit availed in respect of AED (T&TA) account which is not permissible. Therefore, demand is rightly made.

5. I find that it is a settled proposition of law that credit in respect of AED (T&TA) cannot be utilised for payment of basic excise duty as held by the Tribunal in the case of K G Denim Ltd. vs. CCE, Salem reported in 2008 (222) ELT 464(Tri-Chennai).

6. In the present case, the appellants were availing credit of duty paid in respect of inputs used in or in relation to manufacture of final products.

The final product was exempted from payment of duty with effect from 9.7.2004. At that time, there was no balance in the RG 23 A Part II account. The appellant paid basic Excise duty from their AED (T&TA) account which is not permissible. Now, the question arises whether the demand as confirmed by the lower authorities is sustainable or not. The appellant was required to reverse the credit lying in their accounts in respect of RG 23A Part II account. Larger Bench of the Tribunal in the case of Ashoka Iron and Steel Fabricators (supra) held that in case goods became exempted, no demand can be made in respect of credit availed and utilised during the period when final product is dutiable. Further, the Hon'ble Rajasthan High Court in the case of Hindustan Zinc relied upon by the appellant held that in case the final product was cleared without payment of duty due to exemption or nil rate of duty does not effect availing of modvat credit on the date of entitlement. Even on the date of entitlement there is no illegality or invalidity in taking the credit on such modvat / Cenvat credit rate to such credit against the future liability towards duty became absolute and not liable to reverse. The Hon'ble Punjab & Haryana High Court in the case of CCE, Chandigarh vs. C.N.C. Comercial Ltd. (supra) wherein the appeal was filed by the Revenue the following question of law was framed.

> *"Whether in the absence of availability of sufficient balance to reverse the Cenvat Credit involved on the inputs lying in stock inputs in process and inputs contained in finished goods*

at the time of opting out of Cenvat credit scheme is required to be paid though cash payment /PLA or not?"

7. The Hon'ble High Court held as under:

"We have heard the learned Counsel for the appellant-revenue of a considerable length and find that no question of law warranting admission of the appeal would arise. There are findings of fact recorded by the Commissioner (Appeals) as upheld by the Tribunal to the effect that the assessee-respondent had correctly availed and utilised the credit of duty paid by them on those inputs when these final products were chargeable to excise duty. It has further been found that there was no one to one relationship of the inputs used and the final products manufactured and cleared from the factory. It has rightly been held that the credit of duty paid on inputs cannot be confined to a particular raw material to which the credit is related and out of which a final product is manufactured. Therefore, it has been rightly held that the assessee-respondent were not required to reverse the Cenvat Credit of Rs.88,731/-. The judgement of the Hon'ble Supreme Court in Dai Ichi Karkaria case has been correctly applied. There is thus no merit in these appeals which are accordingly dismissed.

8. In view of the above, I find ratio of this decision is fully applicable to the facts of the present case. The impugned order is set aside and appeal is allowed.

(Pronounced in the open Court)

(S.S. Kang)
Vice President

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